

## REMARKS

### *Claim Status and Rejections*

Claims 124-130 and 211 have been indicated as being allowable. Claims 85 and 215 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including the limitations of the base claim and any intervening claims.

Claims 48, 184, 188, 191, 198, 199, 206, 208, 209, 213, 214, 218, 221-223, 226, 228, 229 stand rejected under 35 USC § 102(b) as being anticipated by Montgomery, U.S. Patent No. 5,168,866.

Claims 186, 189, 204, 216, 219, 224 stand rejected under 35 USC § 103(a) as being unpatentable over Montgomery in view of Voges, U.S. Patent No. 5,894,841.

Claims 178, 205, 217, 225 stand rejected under 35 USC § 103(a) as being unpatentable over Montgomery in view of Voges and further in view of Weers, U.S. Patent No. 5,874,841.

Claims 190, 207, 210, 212, 220, 227 stand rejected under 35 USC § 103(a) as being unpatentable over Montgomery.

Claims 48, 184, 186-191, 198, 199, 204-210, 212-214 and 216-229 remain at issue.

Applicants respectfully traverse all the claim rejections on the basis that Montgomery fails to anticipate the rejected independent claims, namely claims 48, 199, 213 and 223.

Independent claims 48 and 213 each recite the step of heating a physiologically active compound to vaporize at least a portion of the compound and *cooling* the resulting vapor by mixing the vapor with a gas in a predetermined ratio, selected to form an aerosol comprised of particles within a desired size range when a stable concentration of particles in the gas is reached.

Claims 199 and 223 are of a different scope in that each recite heating a coating comprising a physiologically active compound deposited onto a substrate to vaporize at least a portion of the compound and then *cooling* the resulting vapor with a gas in a predetermined ratio, selected to form an aerosol comprised of particles within a desired size range with a recited stability.

Collectively, common elements of all of the independent claims is heating a compound to vaporize the compound and then cooling the resulting vapor by mixing the vapor with a gas to form a stable concentration of particles.

As an initial matter, Montgomery does not appear to teach or suggest formation of a condensation aerosol and certainly not the formation of condensation aerosol particles in a select size range or stable particles. Rather, Montgomery is directed to a vaporizer used with anesthetics having a boiling point near the ambient temperature. From the specification, the vaporizer of Montgomery appears to require an anesthetic agent within the vaporizing chamber 12 be protected by insulation 18 to prevent the amount of heat transfer from outside the vaporizing chamber 12 from exceeding the amount of heat lost via latent heat vaporization of the anesthetic. Thus, the temperature controlled heater 20 is provided to prevent the temperature in the vaporizing chamber 12 from falling below a set value and to provide heat required to evaporate the anesthetic agent. See column 2, line 59 - column 3, line 8. This disclosure infers that vapors formed in the vaporizing chamber 12 are not subject to being condensed to form aerosol particles when exposed to ambient air flowing through the passageway defined between the inlet 2 and the outlet 4. The reason is with a boiling point near ambient temperature, the vapor would not necessarily condense in the passageway. Thus, not only does Montgomery fail to expressly teach the formation of an aerosol comprised of stable particles within a desired size range in the passageway, for the reasons set forth above, the undersigned submits Montgomery would teach away from the formation of condensation aerosol comprised of particles within a desired size range and instead appears to be intended for delivery of an anesthetic in a vapor form to a patient.

For the foregoing reasons, Applicants respectfully submit Montgomery fails to anticipate independent claims 48, 199, 213 and 223 and reconsideration and withdrawal of the rejection of these claims are respectfully requested. Applicants further submit the other references applied by the Examiner in rejecting the various dependent claims fail to teach the missing elements of Montgomery and reconsideration and withdrawal of the rejection of the dependent claims are further requested.

If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to deposit account No. 19-5117.

Respectfully submitted,

/TD Bratschun/

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